

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALASKA VILLAGE ELECTRIC
COOPERATIVE, INC., an Alaska
corporation,

Plaintiff,

v.

ZURICH AMERICAN INSURANCE
COMPANY, a New York corporation;
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,
THROUGH CHARTIS GLOBAL MARINE,
a Pennsylvania corporation; NATIONAL
CASUALTY COMPANY, a Wisconsin
corporation; GREAT AMERICAN
INSURANCE COMPANY OF NEW YORK,
a New York corporation; and STARR
INDEMNITY & LIABILITY COMPANY, a
Texas corporation,

Defendants.

IN ADMIRALTY AND AT LAW

Lead Case No. 2:11-cv-01375-RAJ

Member Case No. 2:11-cv-01819-RAJ

DECLARATION OF JOHN K. WEBER
IN SUPPORT OF REPLY ON MOTION
FOR SUMMARY JUDGMENT

NOTED FOR HEARING:
February 17, 2012

John K Weber declares as follows:

1. I am a Vice President of Zurich Global Marine in its New York City offices, a position I have held for six years now. As such, I am Zurich Marine's Product Line Director for Hull and Marine Liability coverages in North America, meaning I am the ultimate head of underwriting for these types of marine coverages, including builder's risk coverages. I am also a CPCU, or Chartered Property and Casualty Underwriter, the standard US professional

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REPLY ON MOTION FOR SUMMARY JUDGMENT:
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1 designation for underwriters in the property and casualty field. Additionally, I have been
2 employed in the marine insurance business for over thirty years, beginning in 1977. I am the
3 current chair of the Liability Committee at the American Institute of Marine Underwriters
4 (AIMU). I am a past Chair of the AIMU Forms & Clauses Committee. I teach insurance,
5 including marine insurance, as an adjunct professor at St John's University, and I teach
6 marine insurance for the AIMU.

7 2. I have reviewed the material submitted to date on behalf of the assureds in this
8 controversy, including the affidavits of Mr. Bader and Mr. Bauer.

9 3. Mr. Bauer's summary of the history and meaning of Addendum Two, and the
10 consequences of its non-inclusion in the coverages afforded are in error. Addendum Two was
11 a creation of the American Hull Insurance Syndicate. It has never been adopted by the
12 AIMU, and is in fact not even listed as a market form by the AIMU on its web site. It is
13 occasionally and even frequently used, but certainly not consistently nor universally, it
14 having been created by the American Hull Insurance Syndicate for its "blue water," ocean-
15 going line of business. The Syndicate has never been more than peripherally involved in the
16 underwriting of domestic coastwise and inland craft like these two vessels. When the
17 Syndicate first issued Addendum Two, moreover, it did so by a letter making it clear that it
18 was doing so not to change coverage, but to more emphatically affirm the original intent of
19 the Hull Syndicate builders risk form. Mr. Bauer is incorrect when he asserts the omission of
20 Addendum Two somehow expands the coverage afforded to include repair costs for
21 defective workmanship by a yard on a vessel under construction. Whatever Mr. Bauer may
22 have intended, that is not the construction, the meaning, or the coverage afforded by the
23 American Institute Builder's Risk Form, and his opinion is most certainly not shared by the
24 marine insurance industry in general or by me personally.

25 4. David Fowler called me to ask for my authorization to bind this risk without
26 Addendum Two. I asked him specifically why the request was being made. He wrote me on

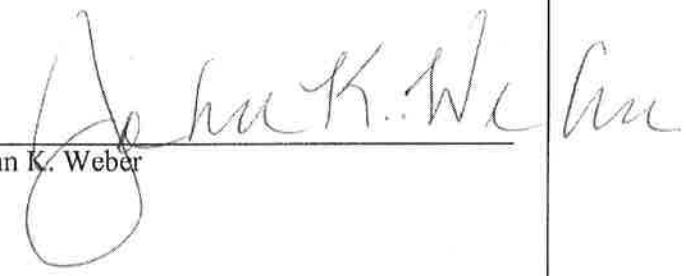
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1 July 15 of 2010 (via e-mail), to say "I spoke to the broker who advises that attorney Jim
 2 Bauer insists that Addendum No. 2 be stricken from coverage." Mr. Fowler and I discussed
 3 it, and we e-mailed one another. I explained that, in my view, not including the Addendum
 4 made no difference in coverage and that this addendum was frequently not included on
 5 builder's risk programs on which we participated; Mr. Fowler agreed, and we confirmed that
 6 in an e-mail. He did not relate to me any intent or request to provide coverage for the costs of
 7 repairing defective work by the shipbuilder, and I'd not have given him authority to write it if
 8 he had. I would not have approved warranty coverage. That warranty obligation is the
 9 shipbuilder's, and in my view, the builder's risk insurers are as entitled to the faithful
 10 performance of the warranted level of performance as any other participant in the risk. In the
 11 event, I gave Mr. Fowler my authorization to proceed as he had already tentatively quoted to
 12 the broker for the risk. I was most certainly not authorizing coverage for defective yard work
 13 repair costs which are, I understand secondhand, the only form of damages claimed here.

14 I declare under penalty of perjury under the laws of the State of Washington that the
 15 foregoing is true and correct.

16 Dated this 16th day of February 2012.

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 19 John K. Weber
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of February, 2012, I caused to be served the foregoing DECLARATION OF JOHN K. WEBER IN SUPPORT OF REPLY ON MOTION FOR SUMMARY JUDGMENT on the following parties via United States District Court – Western District of Washington’s Electronic Case Filing System (“ECF”) at the following addresses:

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By: 

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National Union Fire Insurance Company
of Pittsburgh, PA, through Chartis
Global Marine, National Casualty
Company, Great American Insurance
Company of New York, and Starr
Indemnity & Liability Company

CERTIFICATE OF SERVICE – 1
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